

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	PUBLIC SERVICE COMMISSION
)	
COUNTY OF CHARLESTON)	DOCKET NO: 2010-____-T
)	
Charleston Portable Storage, LLC;)	
Portable Storage of North Carolina,)	
LLC; Upstate Storage Partners, LLC; and)	PETITION OF DECLARATORY
Portable Storage and Moving of)	JUDGMENT
Columbia, LLC)	
)	
)	

Pursuant to Commission Practice and Procedure Rule No. 103-825 (2), Petitioners, who are Portable On Demand Storage (PODS) Franchisees in South Carolina, request that the Commission issue a declaratory judgment finding that its PODS services are exempt from Commission jurisdiction. The Franchisees are: (1) Charleston Portable Storage, LLC; (2) Portable Storage of North Carolina, LLC; (3) Upstate Storage Partners, LLC; and (4) Portable Storage and Moving of Columbia, LLC.

**(A) INTEREST OF PETITIONERS AND STATEMENT OF THE FACTS
PROMPTING THE PETITION**

Petitioners hold the following Commission Certificates:

- (1) Charleston Portable Storage, LLC – Certificate No. 9717:

HOUSEHOLD GOODS, as defined in R.103-210(1):
Between points and places in Charleston, Berkeley and Dorchester
Counties restricted to delivery of empty 16’8’8 and 12’x8’x8’ PODS
proprietary containers to shipper origins, loading by shipper, and pickup
and delivery of shipper-loaded containers to shipper destinations or a
warehouse with shipper-loaded containers subsequently delivered from
warehouse to shipper destinations.

- (2) Portable Storage of North Carolina, LLC – Certificate No. 9751:

HOUSEHOLD GOODS, as defined in 26 S.C. CODE ANN. REG 103-210
(1) (SUPP. 2004)

BETWEEN POINTS AND PLACES IN HORRY, GEORGETOWN AND
MARION COUNTIES, SOUTH CAROLINA

- (3) Upstate Storage Partners, LLC -- Certificate No. 9728-A:

HOUSEHOLD GOODS, defined as in 26 S.C. CODE ANN. REG 103-210 (1) SUPP. 2006)

BETWEEN POINTS AND PLACES IN CHEROKEE, GREENVILLE, SPARTANBURG, OCONEE, PICKENS, LAURENS, UNION, ANDERSON, YORK, NEWBERRY, MCCORMICK, GREENWOOD AND ABBEVILLE COUNTIES, SOUTH CAROLINA

- (4) Portable Storage and Moving of Columbia, LLC – Certificate No. 9737-A:

HOUSEHOLD GOODS, as defined in 26 S.C. CODE ANN. REG 103-210 (1) SUPP. 2006)

BETWEEN POINTS AND PLACES IN RICHLAND, LEXINGTON, NEWBERRY AND FAIRFIELD COUNTIES, SOUTH CAROLINA AND RESTRICTED TO DELIVERY OF EMPTY 16'X8'X8' AND 12'X8'X8' PORTABLE STORAGE UNITS TO SHIPPER ORIGINS, LOADING BY THE SHIPPER, AND PICKUP AND DELIVERY OF SHIPPER-LOADED PORTABLE STORAGE UNITS TO SHIPPER DESTINATIONS OR A WAREHOUSE WITH SHIPPER-LOADED PORTABLE STORAGE UNITS SUBSEQUENTLY DELIVERED FROM THE WAREHOUSE TO SHIPPER DESTINATIONS.

The Certificates are attached hereto as Exhibits 1 through 4, respectively.

PODS was established in 1998 and is the Franchisor for portable-on-demand storage containers. Neither PODS nor its Franchisees load or unload the PODS containers. PODS merely transports the containers either to the destination designated by the customer or to a PODS Franchisee's warehouse for storage and later delivery. There are 150 franchisees in the United States and the above four in South Carolina. Those franchisees operate 247 warehouses throughout the United States. South Carolina franchisees have warehouses in Charleston, Columbia, Greenville, and Myrtle Beach.

(B) STATUTORY PROVISION OR OTHER AUTHORITY INVOLVED

In 1995, as codified in 49 U.S.C. Section 14501. **Federal authority over intrastate transportation**, Congress de-regulated intrastate for-hire transportation in terms of price, route or service. An exception, as is here relevant, is the transportation of household goods. 49 U.S.C. Section 14501 (c) (2) (B).

In 2005, as a part of the "Household Goods Mover Oversight Enforcement and Reform Act of 2005", Congress amended the definition of a household goods motor carrier

to exclude portable storage businesses such as those operated by PODS (49 U.S.C. Section 13101(12) (C)) :

C) Limited service exclusion – the term does not include a motor carrier when the motor carrier provides transportation of household goods in containers and trailers that are entirely loaded and unloaded by the individual (other than an employee or agent of the motor carrier).

In Directive No. 2010-91 dated January 27, 2010, in Docket No. 2009-141-T in *Application of U-Haul Company of South Carolina, Incorporated*, the Commission stated:

In **2005** Congress enacted the SAFE, ACCOUNTING, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS ("SAFETY-LU"). SAFETY-LU includes a "Limited Service Exclusion" stating that the term household goods motor carrier "does not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual other than an employee or agent of the motor carrier." U-Haul Company of South Carolina, Inc. falls under the "Limited Service Exclusion." Therefore, under the facts of this case, the Commission's jurisdiction in this matter is exempted by SAFETY-LU.

(C) UNCERTAINTY WHICH IS THE SUBJECT OF THE PETITION

Petitioners desire a clear ruling that the Commission does not have jurisdiction over its PODS services.

(D) RELIEF REQUESTED

Petitioners request that the Commission rule as follows:

- (1) the Commission does not have jurisdiction over PODS services; and
- (2) the Certificates of Petitioners are therefore rendered moot.

Respectfully submitted,

A handwritten signature in blue ink that reads "David Popowski". The signature is fluid and cursive, with the first name "David" and last name "Popowski" clearly legible.

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